LIBRARY
SUPREME COURT, U. S.

Office-Supreme Court, U.S.
FILED
OCT 24 1969
JOHN F. DAVIS, CLERK

No. 581

In the Supreme Court of the United States

OCTOBER TERM, 1969

CHARLES HOFFMAN, JR.,
Petitioner,

vs.

THE UNITED STATES OF AMERICA,
Respondent.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit

---

REPLY BRIEF FOR PETITIONER

CHARLES A. BELLOWS
Ten South LaSalle Street
Chicago, Illinois 60603
Attorney for Petitioner

HARRY J. BUSCH
JASON E. BELLOWS
SHERMAN C. MAGIDSON
on the brief

UNITED STATES LAW PRINTING CO., CHICAGO, ILLINOIS 60618 (312) 525-6581

In the Supreme Court of the United States

OCTOBER TERM, 1969

No. 581

CHARLES HOFFMAN, JR.,

Petitioner,

vs.

THE UNITED STATES OF AMERICA,

Respondent.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit

REPLY BRIEF FOR PETITIONER

On the points raised in our Petition, we make the following Reply, which we believe is all that is necessary, to the Government's Brief in Opposition. We use the same headings and numerals (where applicable) as in the Petition:

STATEMENT

The Government's Brief recites (G.Br., p. 4) that "At the end of 1963, the books of Multi-State showed that it was insolvent to the extent of $783,000 * * *" This recitation is misleading. No claim was made, during the state court proceedings in November-December, 1963, that Multi-State was insolvent. (A. 878) In fact, the last financial statement filed by Multi-State during Petitioner's employment (June 30, 1963 Statement; filed in August, 1963; G.Ex. 2, A. 1032-3) showed assets of $2,461,725 and a surplus of $250,000. Multi-State's 1963 year-end statement showed a deficit surplus of $783,000. but the draft of that statement was not prepared until March, 1964, by an accountant retained by McLarty after he had acquired control of Multi-State. (A. 412; G.Ex. 13, A. 1047-9)

The Government is mistaken in its claim (G.Br., p. 8 note 6) that the trial judge had ordered the Government to make the documents relating to events occurring after February 4, 1964, available to the defense. On February 20, 1967, Judge Austin ordered that the Government make available records taken from the defendant; he denied the motion for discovery as to all other records. (R. 160; A. 10) Subsequently, on March 21, 1967, after the December 21, 1966, order referred to in the Government's Brief and the February 20, 1967, order referred to above, Petitioner moved for additional discovery in the form and for the reasons described in the Petition (p. 6). At this hearing, Judge Austin specifically noted that his original "turnover" order was limited. (A. 1016) Counsel for the defendant explained that this motion, requesting an order directed to the Illinois Department of Insurance and the Bureau of Liquidations, sought discovery of books and records of the company which had been reconstructed by

the Director of Insurance as the Liquidator. (A. 1016) Judge Austin, however, viewed these books and records, because they were the products of the reconstruction efforts by the Department of Insurance, as internal memoranda of the Department (A. 1016-17), and, as a result, ruled that the defense could have access only to "all the books that you had in your possession and all the data that was in your possession prior to the time of the liquidation * * * *" (A. 1018) The Petitioner's efforts to obtain discovery of the other documents was, as reported in the Petition, denied.[1]

---

[1] The Government claims that Petitioner's trial counsel was not surprised by the admission of the extra-indictment transactions. (G.Br., p. 8 note 7) That counsel's response to the same charge, when it was made in the Court of Appeals, should be noted:

> "Contrary to the assertions in the footnote on pages 40 and 41 of the government's brief [filed in the Court of Appeals], Hoffman's counsel were totally unfamiliar with almost all of the non-indictment transactions when this trial began. In the Multi-State civil case (65 CH 4823), Hoffman's counsel had handled a petition for writ of mandamus in the Supreme Court of Illinois, dealing with one narrow legal issue. (Docket No. 39518.) They had also acted as counsel for Progressive General in a rehabilitation case brought by the Director of Insurance, which was pending at the time of the trial in the court below. (65 CH 5817; see also 84 Ill. App. 2d 109 (1st Dist. 1967) and 85 Ill. App. 2d 427 (1st Dist. 1967).)" Appellant's Reply Brief filed in the Court of Appeals, pp. 8-9 footnote.

REASONS FOR GRANTING THE WRIT

1. The admission of a large volume of evidence unrelated to the specific offense charged in the indictment.

That the evidence admitted solely against the subsequently acquitted co-defendant, McLarty, was prejudicial to Petitioner's case is a theme which runs throughout Petitioner's arguments. (See, e.g., Petition, Point 1, pp. 24-25; Point 2, p. 25) Thus, we are unable to understand that portion of the Government's Brief which asserts that Petitioner does not argue that the evidence of McLarty's conduct subsequent to February 4, 1964, was prejudicial to his case. The evidence was originally admitted over the objections of both defendants that it was incompetent to prove their motives and intents on February 4, 1964. (A. 278-94) When McLarty was acquitted, Petitioner claimed that the evidence was wholly incompetent for any purpose, and requested that the jury be advised of that fact by a specific reference to the names of the witnesses who gave the evidence and to the specific exhibits. He provided the district judge with a means of identifying this evidence to the jury. (A. 17-22)

The Government, however, relies on the fact that Petitioner's counsel was reluctant to have the trial judge read the testimony *itself* before telling the jury to disregard it. (A. 932) It is inconceivable that Petitioner could be considered to have abandoned his specific request to have the stricken evidence identified by means of the witness who gave it merely because he did not wish the trial judge to

read the testimony in its entirety to the jury before telling them to forget all about it. If it is impossible to "unring" a bell, it is twice as impossible to "unring" a twice-rung bell.

Respectfully submitted,

CHARLES A. BELLOWS
Attorney for Petitioner

HARRY J. BUSCH
JASON E. BELLOWS
SHERMAN C. MAGIDSON
on the brief